

(vi) If an incentive type contract is being considered, a notice to the offeror of the Government's desire as to use of incentives considered applicable, objectives of the incentive performance goals, schedules, milestones, critical delivery parameters, and similar information must be included.

(2) *Technical proposal instructions.*

(i) The technical proposal instructions should clearly and concisely describe the information prospective offerors must provide in their technical proposals. The instructions should address the need for submission of a detailed work plan indicating how each aspect of the statement of work is to be accomplished, a discussion of how the work is to be organized, staffed, and managed, and statements of the qualifications and experience of the prospective offeror and its key personnel.

(ii) The technical proposal instructions must be specific enough to convey the information the program office will require from offerors to allow the technical proposal evaluators to determine whether a proposal is acceptable. Therefore, it is essential that the instructions are written to elicit the information necessary to fully address all the elements of the work plan with particular emphasis on the evaluation criteria, so that evaluators may readily evaluate each offer in the pertinent areas. The instructions should not require the submission of excessive information since this will complicate the evaluation process and could cause unnecessary proposal preparation costs for offerors.

(iii) The technical proposal instructions should require that technical proposals be prepared in a specified format to facilitate evaluation. A uniform format will minimize evaluators' efforts and should minimize the amount of extraneous and voluminous material sometimes included in proposals.

(iv) Since specific instructions must be developed to suit the needs of the individual acquisition, detailed guidance concerning the contents of the technical proposal instructions is not presented here. However, the following represents a sampling of general statements which may be helpful in the preparation of the instructions:

TECHNICAL PROPOSAL INSTRUCTIONS

Proposals which merely offer to conduct a program in accordance with the requirements of the Government's scope of work will not be eligible for award. You must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

A detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished. Your technical approach should be in as much detail as you consider necessary to fully explain your proposed technical approach or method. The technical proposal should reflect a clear understanding of the nature of the work being undertaken.

The technical proposal must include information on how the project is to be organized, staffed, and managed. Information should be provided which will demonstrate your understanding and management of important events or tasks. You must explain how the management and coordination of consultant and/or subcontractor efforts will be accomplished.

The technical proposal must include a list of names and proposed duties of the professional personnel, consultants, and key subcontractor employees assigned to the project. Their résumés should be included and should contain information on education, background, recent experience, and specific scientific or technical accomplishments. The approximate percentage of time each individual will be available for this project must be included. The proposed staff hours for each of the above individuals should be allocated against each task or subtask for the project.

The technical proposal must provide the general background, experience, and qualifications of the organization. Similar or related contracts, subcontracts, or grants should be included and contain the name of the customer, contract or grant number, dollar amount, time of performance, and the names and telephone numbers of the project officer and contracting/grants officer.

The technical proposal must contain a discussion of present or proposed facilities and equipment which will be used in the performance of the contract.

The technical proposal must be prepared and submitted in the following format:

(Provide the required format.)

(3) *Business proposal instructions.* Business proposal instructions consist of cost and pricing data and administrative and management data.

(i) *Cost and pricing data.* Prospective offerors must be informed in the business proposal instruction that they are

required to submit cost or pricing information in sufficient detail to allow a complete cost analysis. (See FAR 15.804 for requirements on cost or pricing data.) Categories and amounts of labor, materials, travel, computer time, overhead and other costs should be requested. Prospective offerors are to be provided Standard Form 1411, Contract Pricing Proposal Cover Sheet, for use in preparing the cost of pricing data, and are to be told to submit, as a minimum, cost proposals fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amount. Prospective offerors are to comply with the instruction on the SF 1411 and fill in or check the appropriate boxes. In addition, they should be informed to itemize the cost for individual elements, each as analytical studies, reports, etc., and the estimated cost of each phase or segment of the offered performance.

(ii) *Administrative and management data.*

(A) The business proposal instructions must be written so that the contracting officer receives adequate information to evaluate each offeror's management capability and to determine whether each offeror is responsible. Therefore, under this section, information should be requested to allow the contracting officer to assess the following factors as they apply to the instant acquisition:

- (1) The offeror's financial capability;
- (2) The offeror's capability to meet delivery or performance schedules;
- (3) The offeror's record of past performance;
- (4) The offeror's record of business integrity;
- (5) The offerors's possession of necessary organization, experience, and technical skills, or the ability to obtain them;
- (6) The offeror's possession of required facilities; and
- (7) Any other special consideration involved in the instant acquisition.

In some cases, these factors may duplicate evaluation criteria and may be adequately addressed in the technical proposal instructions. However, the contracting officer must ensure that they are covered in both the business

proposal instructions and the technical proposal instructions.

(B) The contracting officer may determine that other administrative data in the form of additional business or cost information is necessary. Some examples of additional information include:

- (1) A copy of the current agreement on indirect cost rates;
- (2) A copy of the most recent financial statements;
- (3) A discussion on the extent of proposed subcontracting with small and disadvantaged business enterprises;
- (4) A request for pricing or cost breakdown tailored to the instant acquisition to provide information for a more thorough and complete cost analysis; and
- (5) A request for explicit instructions on pricing of options and individual line items.

However, care should be taken to request additional information only when necessary, to prevent excessive proposal preparation costs for offerors.

(C) The following are required statements which must be included in the RFP.

Your proposal must stipulate that it is predicated upon all the terms and conditions of this RFP. In addition, it must contain a statement to the effect that it is firm for a period of at least (insert number) days from the date of receipt by the Government.

It is HHS policy that contractors provide all equipment and facilities necessary for performance of contracts; however, in some instances, an exception may be granted to furnish Government-owned property or to authorize purchase with contract funds. If additional equipment must be acquired, you must include in your proposal the description and estimated cost of each item, and whether you propose to furnish the item with your own funds.

You must identify all Government-owned property in your possession and all property acquired from Federal funds, to which you have title, that is proposed to be used in the performance of the prospective contract.

The management and control of Government property must be in accordance with HHS Publication (OS) 686 entitled, "Contractor's Guide for Control of Government Property (1990)," a copy of which will be provided upon request.

(c) *Section M, Evaluation factors for award—(1) General.* (i) The evaluation criteria must be developed by the

project officer and submitted to the contracting officer in the request for contract (RFC) for inclusion in the RFP. Development of these criteria and the assignment of the relative importance or weight to each criterion require the exercise of judgment on a case-by-case basis because they must be tailored to the requirements of the individual acquisition. Since the criteria will serve as a standard against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical in the selection of a contractor.

(ii) The finalized evaluation criteria and indications of their relative importance or weights, as included in the RFP, cannot be changed except by a formal amendment to the RFP issued by the contracting officer. No factors other than those set forth in the RFP shall be used in the evaluation of proposals.

(2) *Review of evaluation criteria.* (i) The evaluation criteria should be reviewed by the contracting officer in terms of the work statement. This review is not intended to dictate to the program office or project officer, but rather to ensure that the evaluation criteria are clear, concise, and fair so that all potential offerors are fully aware of the bases for proposal evaluation and are given an equal opportunity to compete.

(ii) The project officer and the contracting officer should then review the evaluation criteria together to ascertain the following:

(A) The criteria are described in sufficient detail to provide the offerors (and evaluators) with a total understanding of the factors to be involved in the evaluation process;

(B) The criteria address the key programmatic concerns which the offerors must be aware of in preparing proposals;

(C) The criteria are specifically applicable to the instant acquisition and are not merely restatements of criteria from previous acquisitions which are not relevant to this acquisition; and

(D) The criteria are selected to represent only the significant areas of importance which must be emphasized rather than a multitude of factors. (All

criteria tend to lose importance if too many are included. Using too many criteria will prove as detrimental as using too few.)

(3) *Examples of topics that form a basis for evaluation criteria.* Typical examples of topics that form a basis for the development of evaluation criteria are listed in the following paragraphs. These examples are intended to assist in the development of actual evaluation criteria for a specific acquisition and should only be used if they are applicable to that acquisition. They are not to be construed as actual examples of evaluation criteria to be included in the RFP.

(i) Understanding of the problem and statement of work;

(ii) Method of accomplishing the objectives and intent of the statement of work;

(iii) Soundness of the scientific or technical approach for executing the requirements of the statement of work (to include, when applicable, preliminary layouts, sketches, diagrams, other graphic representations, calculations, curves, and other data necessary for presentation, substantiation, justification, or understanding of the approach);

(iv) Special technical factors, such as experience or pertinent novel ideas in the specific branch of science or technology involved;

(v) Feasibility and/or practicality of successfully accomplishing the requirements (to include a statement and discussion of anticipated major difficulties and problem areas and recommended approaches for their resolution);

(vi) Availability of required special research, test, and other equipment or facilities;

(vii) Managerial capability (ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources, and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previous experience).

(viii) Availability, qualifications, experience, education, and competence of

professional, technical, and other personnel, to include proposed subcontractors and consultants (as evidenced by resumes, endorsements, and explanations of previous efforts); and

(ix) Soundness of the proposed staff time or labor hours, propriety of personnel classifications (professional, technical, others), necessity for type and quantity of material and facilities proposed, validity of proposed subcontracting, and necessity of proposed travel.

(4) *Relative importance or weight.*

(i) A statement or indication of the relative importance or weight must be assigned to each evaluation criterion to inform prospective offerors (and evaluators) of the specific significance of each criterion in comparison to the other criteria. Similarly, if a criterion is subdivided into parts, each of the parts must be assigned a statement or indication of the relative importance or weight.

(ii) The two principal methods used to indicate the relative importance or weight are the numerical score and adjective description. The Department does not prescribe a single method for determining the relative importance or weight, but recommends the use of the numerical score method because it is more precise and informative. However, it is recognized that in some instances the use of the adjective description method be more appropriate and, hence, may be used when that determination is made.

(iii) Cost or price is not generally included as one of the evaluation criteria and is not assigned an indication of relative importance or weight. However, a statement must be included in the RFP to reflect the relationship of cost or price in comparison to the other criteria. The contracting officer must ensure that this statement accurately reflects the appropriate balance between cost or price and the technical factors. The contracting officer and project officer should work together in arriving at the final determination regarding the relationship. The following are examples of statements that may be used to reflect this relationship. However, since these examples represent only the two extremes and the middle position, another statement may be devel-

oped to reflect the relationship which applies to the instant acquisition.

(A) You are advised that paramount consideration shall be given to the evaluation of technical proposals rather than cost or price.

(B) You are advised that paramount consideration shall be given to cost or price rather than the evaluation of technical proposals.

(C) You are advised that the evaluation of technical proposals and cost or price are of approximately equal value.

[49 FR 13979, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984, as amended at 53 FR 43207, Oct. 26, 1988; 54 FR 24343, June 7, 1989; 54 FR 43966, Oct. 30, 1989; 56 FR 47003, Sept. 17, 1991]

315.407 Solicitation provisions.

(c)(2) The referenced provision (FAR 52.215-6, Type of Business Organization) is a representation, has been included under Section K (see 315.406-5(a)(2)(iii)), and need not be restated again.

(8) The provision at 352.215-12 shall be used in place of that specified at FAR 52.215-12.

(g) The referenced provision (FAR 52.215-20, Place of Performance) is to be considered a certification and is included under section K (see 315.406-5(a)(2)(iv)); it need not be restated again.

(n) The contracting officer shall insert the provision at FAR §52.233-2, Service of Protest, in solicitations as required by FAR 33.106(a).

[49 FR 13979, Apr. 9, 1984, as amended at 54 FR 43966, Oct. 30, 1989; 57 FR 11690, Apr. 7, 1992]

315.408 Issuing solicitations.

The minimum proposal preparation or response time between the date of distribution of a RFP and the date set for receipt of proposals shall not be less than 30 calendar days.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 43208, Oct. 26, 1988]

315.409 Pre-proposal conferences.

If a pre-proposal conference is to be held, the provision at 352.215-72 shall be included in the solicitation.

315.410 Amendment of solicitations before closing date.

For additional information on amendments to solicitations, see FAR 15.606.

315.413 Disclosure and use of information before award.**315.413-1 Alternate I.**

The Department shall not use Alternate I procedures.

315.413-2 Alternate II.

The Department shall use the Alternate II procedures as modified in this subsection and shall use the provision at 352.215-12, Restriction on Disclosure and Use of Data, rather than the similar provision at FAR 15.215-12 (see 315.407(c)(8)). Any reference in the FAR to the provision at FAR 52.215-12 shall apply to the provision at 352.215-12.

(b) The term "data," as used in this section and in 352.215-12, refers to trade secrets, business data, and technical data. Trade secrets, within the meaning of 18 U.S.C. 1905, include, for example, processes, formulas, and chemical compositions. Business data includes, for example, commercial information, financial information, and cost and pricing data. Technical data includes, for example, plans, designs, suggestions, improvements and concepts.

The Department recognizes that requests for proposals may require the offeror, including its prospective subcontractor(s), if any, to submit data which the offeror does not want used or disclosed for any purpose other than for evaluation of the proposal. Each proposal containing data which the offeror desires to restrict must be marked on the cover sheet by the offeror with the legend set forth at 352.215-12. Proposals, or portions of proposals, so marked shall be handled in accordance with the provisions of the legend.

(c) Contracting officers receiving proposals which contain restrictive statements or legends not conforming to the referenced provision at 352.215-12 must carefully evaluate the form and substance of the restriction before making a determination to reject the proposal. Deviations in form which do not compromise the Government's rights may

be accepted if approved by the activity's FOI official and the Office of General Counsel, Business and Administrative Law Division.

(e) The Government notice shown in FAR 15.413-2(e) shall be used by this Department and is to be placed on the cover sheet of each proposal or quotation upon its receipt. The Government notice shall be completed by adding the following to the end of the last sentence: "HHSAR paragraph 315.608-72."

(f) The Department sometimes finds it necessary (and in some instances is required by law) to seek evaluation of proposals outside the Department (see 315.608(d)(6)). All conditions required by FAR 15.413-2(f) have been met and are covered in 315.608-72, Procedures for handling and disclosing proposals. In regard to item (f)(1) of FAR 15.413-2, the Department has found that the procedure stated in the first sentence of paragraph 315.608-72 is best and considers it in compliance with the FAR requirement.

(g) See subpart 324.2 for detailed procedures concerning FOIA requests.

[49 FR 13979, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984, as amended at 51 FR 44294, Dec. 9, 1986]

315.470 Review of RFP.

The principal official responsible for acquisition shall establish procedures to ensure that an independent review of the RFP is made between the time the synopsis is sent to the Commerce Business Daily announcing the availability of the RFP and the release date of the RFP. The individual selected to conduct the review must possess the acquisition knowledge necessary to readily ascertain whether the RFP contains the required information to be in conformance with all laws, regulations, and internal procedures and instructions. The individual selected to conduct the review must be a person other than the preparer of the RFP.

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.471 Annual submission of representations and certifications.

Each Principal Official Responsible for Acquisition (PORA) shall determine

whether to allow the use of the annual submission of representations and certifications by offerors. If allowed, the provisions of FAR 14.213 shall be followed.

[55 FR 13536, Apr. 11, 1990]

Subpart 315.5—Unsolicited Proposals

315.505 Content of unsolicited proposals.

(d) Certification by offeror—To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.504 resulting in an unfair advantage to an offeror, the principal official responsible for acquisition (or designee) shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.506 Agency procedures.

(a) The principal official responsible for acquisition is responsible for establishing procedures to comply with FAR 15.506(a).

(b) The principal official responsible for acquisition or his/her designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals. Contacts made outside the contracting activity shall be promptly

coordinated with the principal official responsible for acquisition or the designee.

315.506-1 Receipt and initial review.

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the ground that they lack scientific merit.

315.509 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.509(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with FAR 15.504(b)(7):

The Government will attempt to comply with the "Use and Disclosure of Data" legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

Subpart 315.6—Source Selection

315.602 Applicability.

(b) This subpart does not apply to contracts for architect-engineer services or contracts awarded to the Small Business Administration under section 8(a) of the Small Business Act.